

State of Colorado



Bill Owens
Governor

Stacy L. Worthington
Board Director

DPA

Department of Personnel
& Administration

State Personnel Board
The Chancery
1120 Lincoln St., Suite 1420
Denver, Colorado 80203
Phone (303) 894-2136
Fax (303) 894-2147

Meeting Minutes June 17, 2003

The State Personnel Board met in public session on Tuesday, June 17, 2003, at the Colorado Department of Transportation, 4201 East Arkansas Avenue, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order by Chair Joyce Lottner at approximately 9:00 a.m. In addition to Ms. Lottner, Board members Elizabeth Salkind and John Zakhem were present; Diedra Garcia arrived at approximately 9:20 a.m. Board member Linda Siderius was absent.

Stacy L. Worthington, Board Director; First Assistant Attorney General Richard Forman, Board Counsel; and Jane Sprague, Legal Assistant, were also present.

I. REQUESTS FOR RESIDENCY WAIVERS

A. June 1, 2003 Report on Residency Waivers

There were no residency waiver requests during the time period.

II. PENDING MATTERS

There were no pending matters before the Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

A. Michael Fowler v. Trustees of the State Colleges in Colorado, Western State College, State Personnel Board case number 2002B144.

Ms. Salkind moved to adopt the findings of fact of the Administrative Law Judge but to reverse the ALJ on conclusion of law #4 ("Complainant is entitled to an award of attorney fees and costs"), finding that Respondent's action was not groundless. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Siderius were absent.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. James Aragon v. Department of Corrections, State Personnel Board case number 2001G096.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind, Mr. Zakhem, and Ms. Lottner. Ms. Garcia and Ms. Siderius were absent.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Kevin Harvey v. Department of Human Services, Mount View Youth Services Center, State Personnel Board case number 2002G129.

On May 21, 2003, the Initial Decision and Order Denying Respondent's Request for Attorney Fees was issued. The ALJ denied Respondent's Request for Attorney Fees.

- B. Cheri Mihelich v. Department of Corrections, Fremont Correctional Facility, State Personnel Board case number 2003B052.

On May 27, 2003, the Order re: Respondent's Motion for Summary Judgment; Initial Decision and Notice of Appeal Rights of the Administrative Law Judge was issued. The ALJ found that Respondent's decision to terminate Complainant's employment was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's action is affirmed, Respondent's Motion for Summary Judgment is granted, and Complainant's appeal is dismissed with prejudice.

VI. REVIEW OF THE MINUTES FROM THE MAY 20, 2003 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Salkind moved to approve the minutes of the May 20, 2003 meeting as submitted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Ms. Lottner. Mr. Zakhem abstained because he was not present at that meeting. Ms. Siderius was absent.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS MAY 20, 2003 PUBLIC MEETING:

A. Department of Corrections Retention Area Request

The Board voted to deny the request of the Department of Corrections to limit the retention rights of certified employees who have been separated from state service to major regions within the Department.

B. Kerbin G. Sharp v. Department of Transportation, State Personnel Board case number 2001B074.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge on Remand and to adopt the Initial Decision.

C. Mike Saucedo v. Department of Revenue, Colorado Lottery, State Personnel Board case number 2003G084.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

D. Susan Porto v. Department of Human Services, Division of Rehabilitation, State Personnel Board case number 2003G106.

The Board voted to adopt the Preliminary Recommendation of the Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

Director Worthington reported briefly on behalf of the Personnel Director, commenting that the Civil Service Reform Commission was continuing to hold meetings statewide and that Ken Allikian, a state employee in the Division of Human Resources, Department of Personnel and Administration, was retiring after 30 years. Ms. Lottner proposed that a congratulatory letter be sent to Mr. Allikian for his many years of state service.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Memorandum from Director to Board Members re Retention Area Limitation Requests; Technical Assistance - Retention Area Requests
- Statistical data for Fiscal Year 2003
- Order in Ferrel v. Department of Corrections, State Personnel Board Case No. 2000B092, District Court No. 03CV33
- Order Affirmed in Newkirk v. Department of Corrections, State Personnel Board Case No. 2000B065, Court of Appeals No. 02CA1324
- Order Affirmed in Hay v. Department of Corrections, State Personnel Board Case No. 2002G036, Court of Appeals No. 02CA1113

In addition to the above items, Board Counsel Forman reported that a petition for writ of certiorari had been filed in Brown v. Department of Higher Education, Regents of the University of Colorado, State Personnel Board Case No. 2001B129, on the issue of whether it was improper for the University's attorney to take on the roles of investigator and advisor.

Director Worthington also reported on the following matters:

- The Board has received many cases from the layoff of employees in the Department of Corrections, some of whom are now withdrawing their appeals after receiving retention rights or having positions restored.
- With regard to the total compensation bill passed in the legislature (1316), rulemaking is called for in order to comply with the provisions in this bill.
- In addition to attending the National Judicial College, Kristin Rozansky, Administrative Law Judge, has been recognized by the Denver City Council for her work on the Denver Career Service Board.
- The Civil Service Reform Commission recently held meetings in the western part of the state, including Gunnison, Durango, and Alamosa. Ms. Garcia briefed the Board on these meetings, commenting that at Adams State College in Alamosa, there was a very emotional response to the work of the commission, an expression of an enormous distrust of the administration, and complete opposition to the concept of higher education opting out of the state personnel system. Ms. Garcia also stated that the commission was aiming to clarify the distinction between the roles of the Department of Personnel and Administration and the Board. The timeline includes an upcoming meeting next week, with the working committee reports already posted on the website, recommendations going to the

Governor by the first of September, and the formation of an "implementation team" following the meetings of the working committees.

- B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the May 2003 Executive Session

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Having no more business, the meeting adjourned by consensus.

APPROVED THIS 15th DAY OF JULY, 2003.

Joyce Lottner, Chair

John Zakhem, Vice Chair

Diedra Garcia, Member

Elizabeth Salkind, Member